



**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

200600663

Issuance Date:

February 1, 2007

Stream: **North Fork Buffalo Creek**

Closing Date:

March 5, 2007

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5210

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection (WVDEP) to act on Section 401 Water Quality Certification for the following application:

APPLICANT: Appalachian Environmental, LLC
1500 North Big Run Road
Ashland, KY 41102

LOCATION: The proposed project is located in North Fork Buffalo Creek and unnamed tributaries of North Fork Buffalo Creek approximately 3.3 miles east of Lorado, Logan County, West Virginia, as depicted on the attached Figure 1.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to place fill material into waters of the United States in association with the construction and operation of a coal refuse facility (identified as the 'North Fork Refuse Area'). The proposed project area would be used for the disposal of waste generated at an adjacent preparation plant. The applicant has provided information that no waters of the United States would be impacted in association with the construction of the preparation plant. Jurisdictional waters of the United States within the limits of the refuse area include 11,746 linear feet of intermittent stream and 1,235 linear feet of ephemeral stream.

In order to facilitate the disposal of waste at this area, the applicant requests authorization from the Department of the Army to permanently place fill material into 8,308 linear of jurisdictional stream, including 7,506 linear feet of intermittent stream and 802 linear feet of ephemeral stream. The applicant also requests authorization to temporarily impact 440 linear feet of intermittent stream and 90 linear feet of ephemeral stream in association with the construction of sediment control structures. Details concerning individual stream impacts are provided below (Table 1).

Table 1. Proposed impacts to jurisdictional waters of the United States in association with the North Fork Refuse Area near Lorado, Logan County, West Virginia.

Stream designation	Flow regime	Total (linear feet)	Proposed impacts
North Fork	Intermittent/Ephemeral	8565 / 255	5425 / 400* / 50*
Stream A	Ephemeral	178	40 *
Stream C	Intermittent	900	40 *
Stream D	Intermittent	200	0
Stream G	Intermittent	330	330
UNTribe #1 to St G	Intermittent	198	198
UNTribe #2 to St G	Intermittent	158	158
Stream H	Ephemeral	135	135
Stream I	Intermittent/Ephemeral	1000 / 69	1000 / 69
Stream J	Intermittent/Ephemeral	245 / 598	245 / 598
Stream L	Intermittent	150	150
Total		12,981	8,308 / 530*

*, Proposed temporary impacts to jurisdictional waters of the United States.

MITIGATION PLAN: The applicant has submitted a conceptual mitigation plan with preliminary information concerning proposed methods to compensate for the permanent loss of approximately 8,308 linear feet of jurisdictional stream and temporary impacts to 530 linear feet of jurisdictional stream. The applicant has provided information concerning the following three components of their conceptual mitigation plan:

- The applicant proposes off-site mitigation through the enhancement of 4,000 linear feet of Buffalo Creek. This mitigation area is located just downstream of the North Fork Refuse area and is in the vicinity of the preparation plant described above. The applicant proposes to create riffle, run and pool complexes within this segment of stream to enhance macroinvertebrate and fish habitat. Proposed enhancement activities include the creation of a flood prone area, placement of in-stream structures and the establishment of a riparian zone.

Success of this area is proposed to be assessed through the monitoring of parameters including longitudinal surveys, structure surveys, cross-sections, pebble counts, rapid bio-assessment surveys and fish surveys;

- On-site mitigation is proposed to occur through the creation of approximately 8,100 linear feet of stream in the northern most groin of the project area. The applicant proposes to construct 8,100 linear feet of A and C-type stream channel by incorporating appropriate bankfull width and flood prone areas and establishing natural substrate, in-stream habitat features and an upland riparian zone. Success of this area is proposed to be assessed through the monitoring of parameters including water quality, sediment, organic matter and the collection of quantifiable data with permanent longitudinal, cross-section and rapid bio-assessment measures;
- Approximately 530 linear feet of stream on-site that would be temporarily impacted in association with sediment pond construction would be restored to its pre-disturbance conditions following completion of activities on-site. Baseline conditions of this channel have been assessed through the collection of parameters including habitat description and benthic macroinvertebrate diversity. Success of this area is proposed to be assessed through the monitoring of parameters including water quality, sediment, organic matter and the collection of quantifiable data with permanent longitudinal, cross-section and rapid bio-assessment measures.

A final comprehensive mitigation plan prepared in accordance with Regulatory Guidance Letter (RGL) 02-2 dated December 24, 2002 must be prepared and submitted to this office for review. No work in jurisdictional waters of the United States on-site would be authorized by this office until the applicant has demonstrated compliance with all applicable components of this RGL and has presented all practicable avoidance, minimization and compensation measures.

ATTACHMENTS: Plans of the proposed work are attached to this notice.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain that certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A copy of this public notice will be sent to the State Historic Preservation Office for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: This public notice also serves as coordination with the U. S. Fish and Wildlife Service (USFWS) regarding threatened or endangered species. The proposed project lies within the distribution range of the endangered Indiana bat (*Myotis sodalis*). This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by

the activity, pursuant to Section 7(c) of the Endangered Species Act (ESA) of 1972 (as amended).

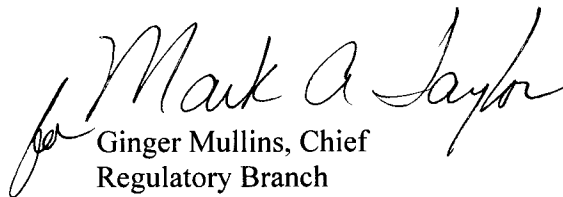
PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b) (1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

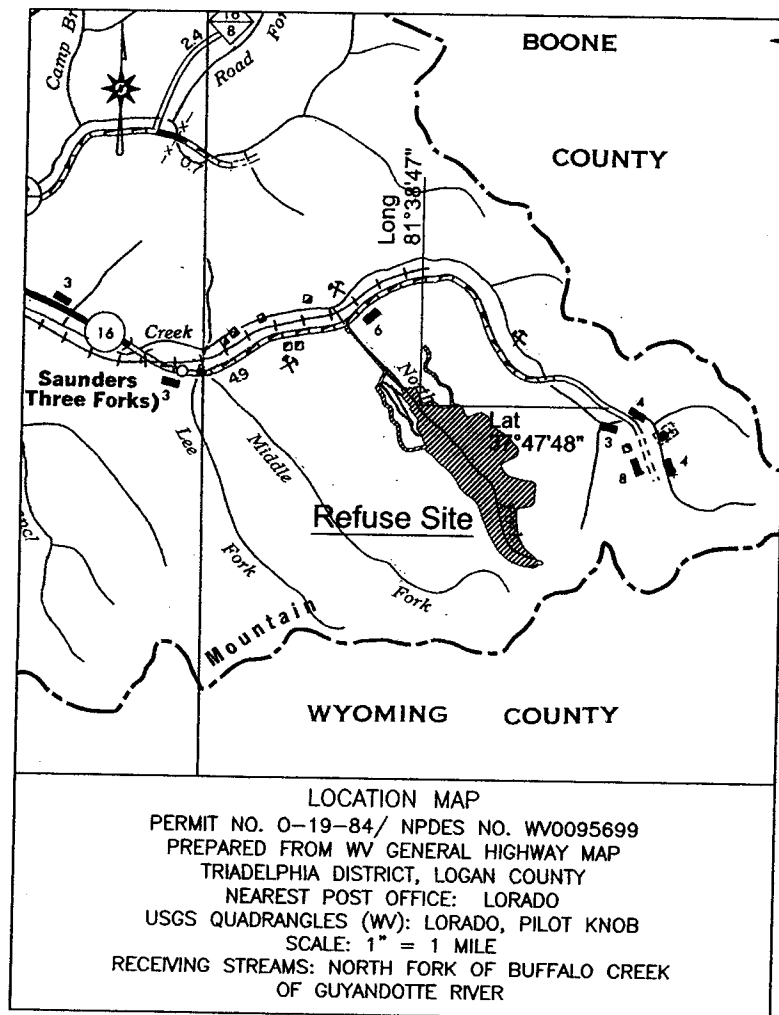
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to:

U. S. Army Corps of Engineers Huntington District
ATTN: CELRH-OR-F Public Notice No. 200600663
502 Eighth Street
Huntington, West Virginia 25701-2070

Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please contact Kimberly Courts-Brown of the North Regulatory Section at 304-399-5210.


Ginger Mullins, Chief
Regulatory Branch

(WV)



Scale: 1 in. = 1 Mi.

Date: July, 2006

Dwg.: VicinityMap.dwg



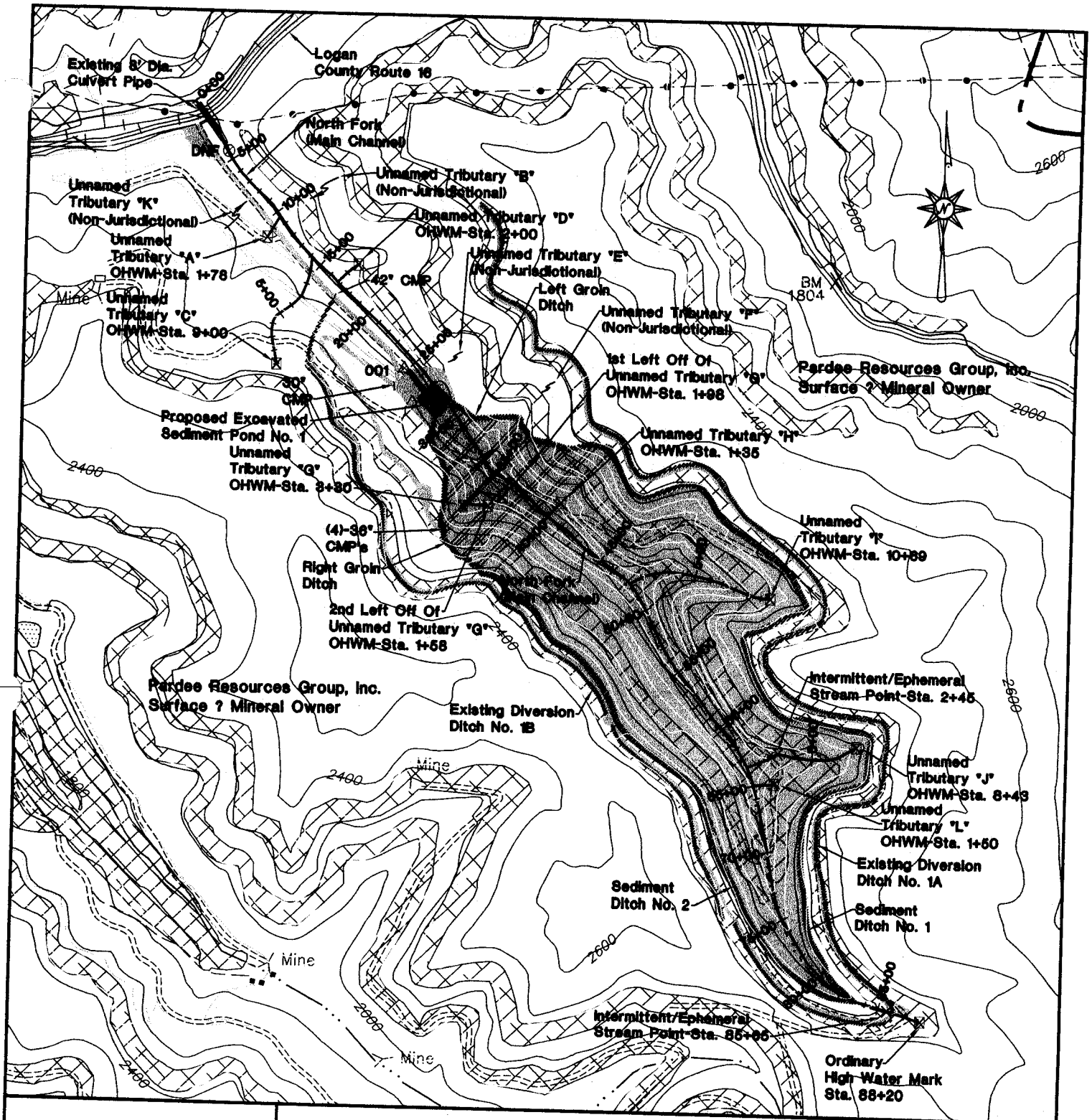
Environmental
Permitting
Services, LLC

Vicinity Map

Prepared From
WV General Highway Map - Logan County

Appalachian Environmental, LLC
North Fork Refuse Disposal Area

Appalachian Environmental, LLC
200600663 - North Fork Buffalo Creek
Logan County, West Virginia
Location Map
Figure 1 of 4



Scale: 1 in. = 1000 Ft.

Date: Dec., 2006 (revised)

Dwg.: PlanViewMap.dwg

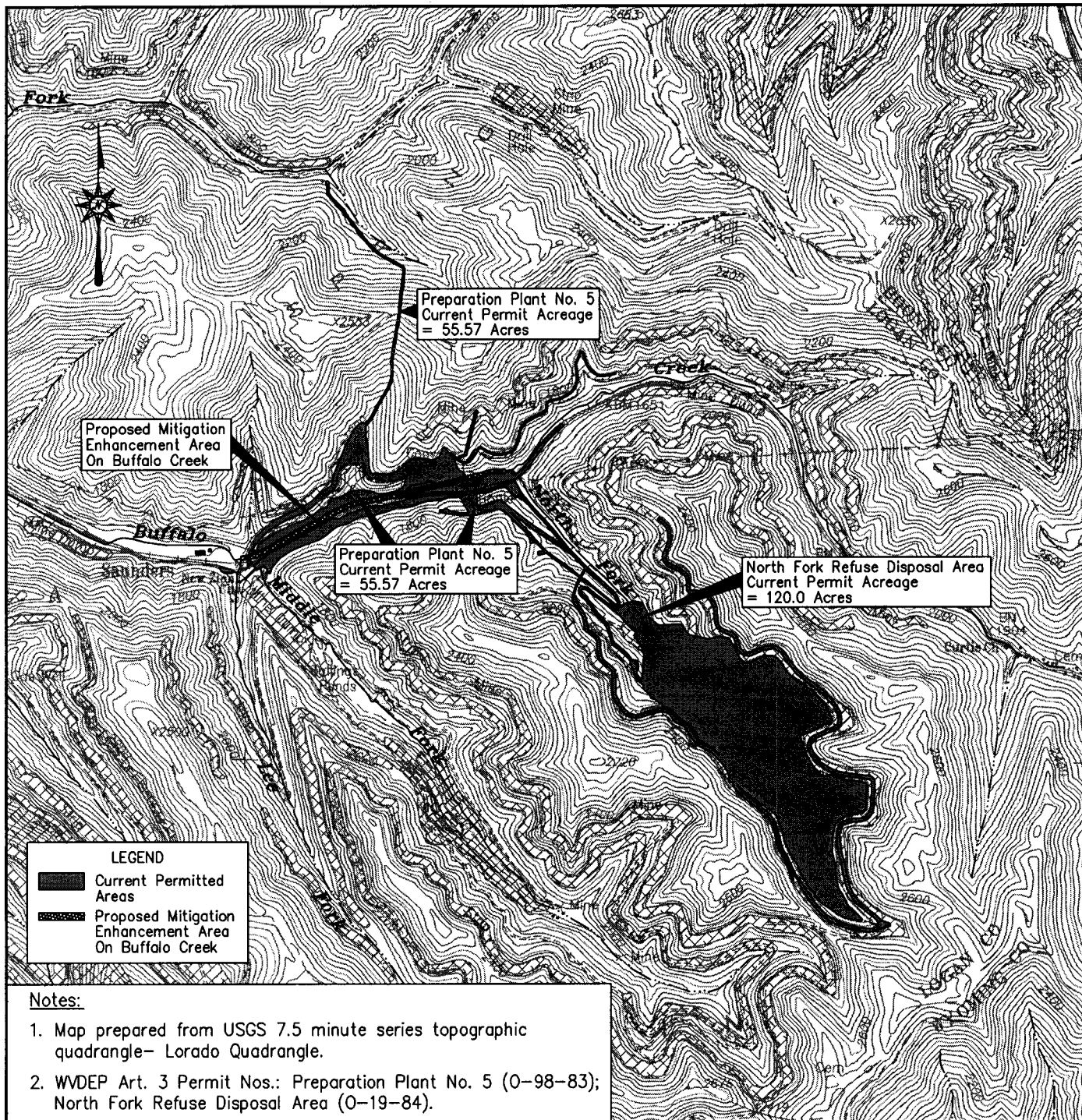


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Plan View Map/ Stream Delineation Map

Prepared From
USGS 7.5 Minute Series Topographic Quadrangle:
Lorado Quadrangle

Appalachian Environmental, LLC
200600663 – North Fork Buffalo Creek
Logan County, West Virginia
Locations of Jurisdictional Waters On-site
Sheet 2 of 4



Scale: 1 In. = 2000 Feet

Date: Dec., 2006

Dwg.: permitarea-REV1.dwg



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Map Showing Bonded Permit Areas

North Fork Refuse Disposal Area
and Preparation Plant No. 5

Appalachian Environmental, LLC
200600663 – North Fork Buffalo Creek
Location of Refuse Area, Adjacent Preparation Plant and
Off-site Mitigation Area
Figure 3 of 4

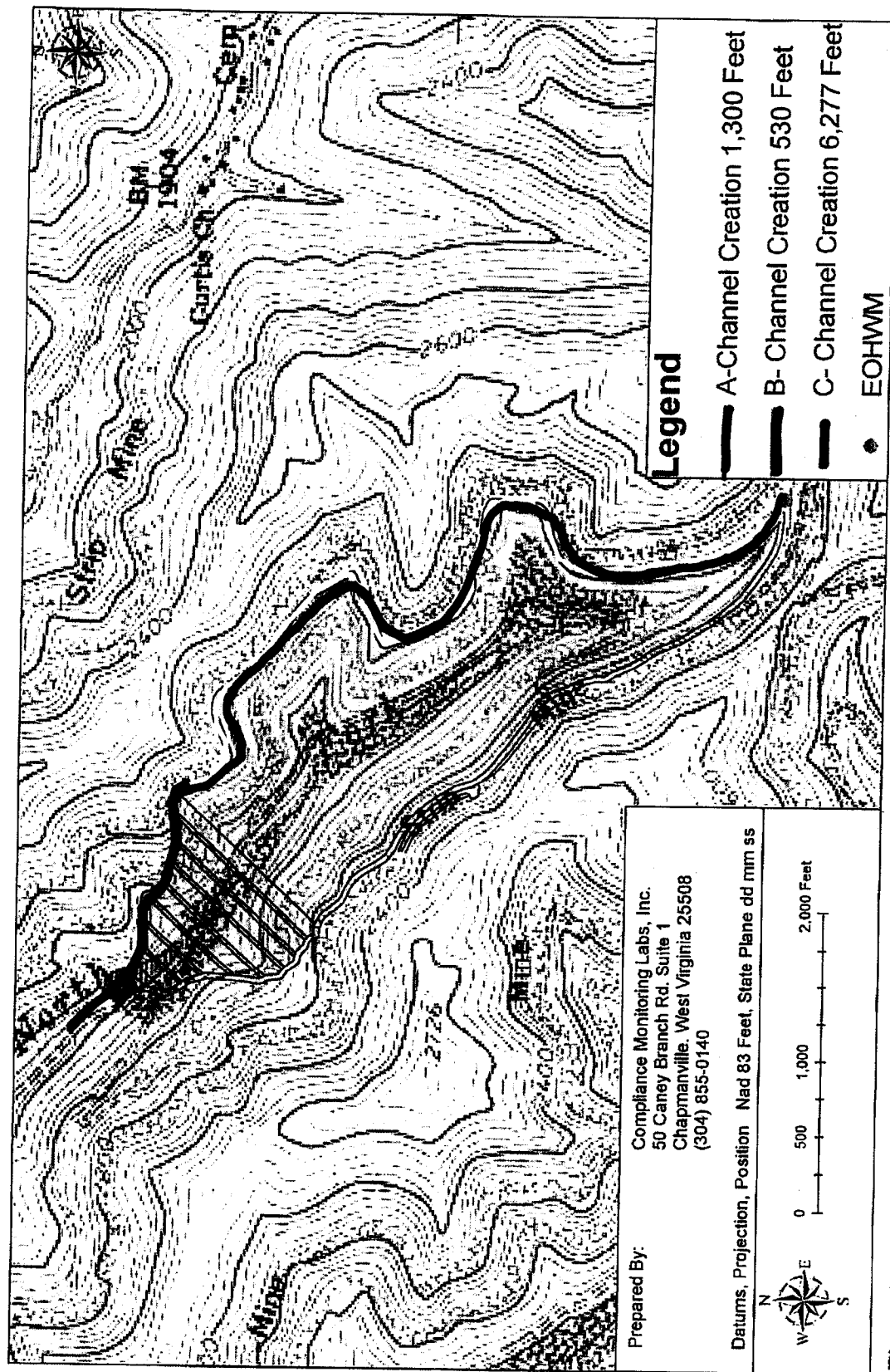


Figure 3. Post mining stream creation and restoration in the North Fork of Buffalo Creek.